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Message Text

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NSAE-00 PA-01 SP-02 SS-15 HA-05 ACDA-12 /090 W
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O 171855Z FEB 78
FM AMEMBASSY CAPE TOWN
TO SECSTATE WASHDC IMMEDIATE 6792
USMISSION USUN NEW YORK IMMEDIATE
INFO AMEMBASSY BONN
AMEMBASSY DAR ES SALAAM
AMEMBASSY GABORONE
AMEMBASSY LAGOS
AMEMBASSY LONDON
AMEMBASSY LUSAKA
AMEMBASSY MAPUTO
AMEMBASSY OTTAWA
AMEMBASSY PARIS
AMEMBASSY PRETORIA

C O N F I D E N T I A L SECTION 1 OF 3 CAPE TOWN 315

E.O. 11652: GDS
TAGS: WA, SF, PORG
SUBJ: NAMIBIA - CLARIFICATIONS OF PROPOSAL

REF: CAPE TOWN 0305

FOLLOWING IS JOINT REPORT OF CAPE TOWN FIVE ON THEIR INFORMAL MEETING WITH FOURIE TODAY, FEB 17, TO RECEIVE HIS COMMENTS REGARDING THE CLARIFYING LANGUAGE PRESENTED TO HIM YESTERDAY (REFTEL):

1. THE CAPE TOWN FIVE MET FOURIE AGAIN AT 1615 HRS LOCAL TIME TODAY. HE GAVE US TWO SETS OF PREPARED COMMENTS (PARAS 7 AND 8 BELOW) WHICH HE EMPHASIZED AS NON-OFFICIAL AND HAVING THE CONFIDENTIAL

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SAME STATUS AS THE CLARIFYING LANGUAGE WE GAVE HIM YESTERDAY.

2. THE GENERAL COMMENTS MADE AT THE END OF THE FIRST DOCUMENT (PARA 7 BELOW) RECAPITULATE FIVE POINTS WHICH MINISTER BOTHA REGARDED AS STILL UNRESOLVED AT THE CONSLUSION OF THE TALKS IN NEW YORK:
A. SIZE, DISPOSITION AND COMPLETION OF WITHDRAWAL OF

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REMAINING SOUTH AFRICAN FORCES.
B. THE SIZE AND FUNCTION OF UNITED NATIONS FORCES (WHICH FOURIE SAID MAY BE MET BY A SATISFACTORY CLARIFICTION OF THE TWO NEW SENTENCES ADDED TO PARA 8E OF THE FIVE'S PROPOSALS (NEW YORK CLARIFICATION R).
C. RELEASE OF DETAINEES (ON WHICH AGAIN FOURIE FELT THAT PROGRESS WAS BEING MADE BEHIND THE SCNESE IN NEW YORK).
D. MECHANISM FOR RESOLVING DISPUTES. FOURIE INDICATED THAT THE INDEPENDENT JURIST REFERRED TO IN CLARIFICATION L MIGHT BE ABLE TO CARRY OUT THIS TASK PROVIDED THAT HIS INDEPENDENCE WAS NOT PREJUDICED BY HIS DESIGNATION AS THE SPECIAL REPRESENTATIVE'S CHIEF LEGAL ADVISER. ITEM 4 UNDER PARA 7 BELOW IS ALSO RELEVANT.
E. THE ANNOUNCEMENT OF THE ELECTION DATE ON WHICH A DECISION WOULD HAVE TO BE TAKEN SOON. WE REMINED FOURIE THAT A UNILATERAL ANNOUNCEMENT COULD MEAN THE END OF THE CURRENT ATTEMPT TO FIND AN INTERNATIONALLY ACCEPTABLE SOLUTION.

3. FOURIE EMPHASIZED THAT HIS COMMENTS ON THE CLARIFYING LANGUAGE WERE INTENDED TO BE HELPFUL. NEVERTHELESS THERE WERE TWO OR THREE POINTS ON WHICH HE FELT CONFIDENT THAT HIS GOVT COULD NOT GIVE WAY. THESE WERE THE POWER OF VETO GIVEN TO THE UN SPECIAL REPRESENTATIVE IN CLARIFICATION F, THE TIMING OF THE COMPLETION OF THE WITHDRAWAL OF TROOPS (PARA 8B OF THE FIVE'S PROPOSALS) CONFIDENTIAL

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AND, PROBABLY, THE QUESTION OF UNITED NATIONS MONITORING (PARA 8A OF THE FIVE'S PROPOSALS). THESE ARE DELT WITH IN ITEMS (3), (6) AND (5) OF PARA 7 BELOW.

4. FOURIE UNDERTOOK TO GIVE US THE PROMISED INFORMATION ON COMMANDOS, THE CITIZEN FORCE, ETHNIC FORCES AND THE HOME GUARD ON TUESDAY, FEB 21, NEXT WEEK.

5. ON WALVIS BAY (PARA 8 BELOW) HE SAID THAT THE WHOLE QUESTION WAS OF INTENSE SENSITIVITY SO FAR AS MR. VORSTER WAS CONCERNED AND COULD EVEN LEAD TO A REJECTION OF THE ENTIRE PACKAGE. IT WAS THEREFORE UNDESIRABLE TO BEING IN EXTRANEOUS ISSUES WHICH WOULD MERELY AROUSE IRRITATION AND SUSPICTION ON THE SOUTH AFRICAN GOVT, ESPECIALLY AS THE POINTS MENTIONED IN THE NEW YORK FORMULATION WERE NOT IN FACT ISSUES OF DIFFERENCE. HE SAID THAT HE WOULD BE PROVIDING INFO SHORTLY ON THE CAPACITY OF THE MILITARY FACILITIES IN WALVIS BAY AND THE CURRENT STRENGTH OF MILITARY FORCES THERE. HIS MINISTER HAD ALREADY GIVEN AN ASSURANCE IN NEW YORK THAT WALVIS BAY WOULD NOT BE RE-INFORCED FROM OUTSIDE.

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6. FOURIE ONCE AGAIN EMPHASIZED THAT HIS COMMENTS AT
THIS STAGE REPRESENTED ONLY HIS OWN JUDGMENT OF WHAT
MIGHT BE ACCEPTABLE TO HIS GOVT. HE ASKED FOR
OUR REACTIONS TO WHAT HE HAD SUGGESTED BEFORE THE FIVE
MAKE ANY FINAL DECISIONS. HE AGAIN UNDERLINED THE
IMPORTANCE HE ATTACHED TO THE ESTABLISHMENT OF A SATISFACTORY
MECHANISM FOR THE RESOLUTION OF DISPUTEES.

7. FOURIE'S COMMENTS ON THE CLARIFYING LANGUAGE (USUN 0528
AND 0554): QUOTE:
(1) PARAGRAPH 2 OF THE DOCUMENT IN QUESTION (THE
FIVE'S PROPOSAL FOR A SETTLEMENT):
THE AMENDMENT TO AVOID MENTIONING "SUPERVISION AND CONTROL"
DOES NOT RESOLVE OUR DIFFICULTIES. THE WAY OUT SEEMS TO
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BE TO GO BACK TO THE ORIGINAL WORDING AND THEN TO SUBSTITUTE
"WITH THE ASSISTANCE OF THE UNITED NATIONS" IN THE PLACE
OF "APPROPRIATE UNITED NATIONS SUPERVISION AND CONTROL".
THE LATTER PHRASEOLOGY IS TAKEN FROM PARAGRAPH 10 OF
RESOLUTION 385 AND FURTHERMORE COINCIDES WITH THE WORDING
USED IN THE 1950 ADVISORY OPINION OF THE WORLD COURT, WHICH
WAS ACCEPTED BY THE UNITED NATIONS.

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(2) PARAGRAPH 4:
IT APPEARS THAT THE INSERTION OF THE WORDS "LEGALITY OF
THE" DOES NOT RESOLVE SOUTH AFRICAN PROBLEM. AS PREVIOUSLY
INDICATED THE SOUTH AFRICAN DIFFICULTIES COULD BE MET BY
WORDING MORE OR LESS ALONG THE FOLLOWING LINES:
"SHALL IN NO WAY PREJUDICE ANY PARTY'S POSITION IN
REGARD TO THEIR LEGAL POSITION".
(3) PARAGRAPH 5:
THE FOLLOWING ASPECTS OF THE NEW FORMULATION PRESENT
PROBLEMS:
(A) "....AT ALL LEVELS OF ADMINISTRATION".
THIS CREATES THE IMPRESSION OF INTERFERENCE WITH THE
ADMINISTRATIVE PROCESS. PRESUMABLY THE INTENTION IS TO
MAKE SURE THAT THERE WILL BE NO DISCRIMINATORY OR INTIMIDA-
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TORY MEASURES OR ACTIONS BY LOCAL AUTHORITIES IN THE
ELECTORAL PROCESS. THIS IS UNNECESSARY SINCE THE ADMINISTRATOR
GENERAL HAS FULL AND FINAL RESPONSIBILITY FOR THE WHOLE
TERRITORY AND IT WILL BE UP TO HIM TO RECTIFY ANY UNFAIR
OR IRREGULAR SITUATION.
(B) "... IT SHALL NOT TAKE EFFECT".
IT WAS NEVER ENVISAGED THAT THE UNITED NATIONS SPECIAL
REPRESENTATIVE WOULD HAVE THE POWER OF VETO. IT WAS RATHER
ENVISAGED THAT IF HE WAS NOT SATISFIED WITH ANY ASPECT HE
WOULD IMMEDIATELY REPORT TO THE SECRETARY GENERAL.
(C) "...PROPOSE ACTION FOR THE IMPLEMENTATION OF ANY
ASPECT OF THE POLITICAL PROCESS".
IT WOULD BE PREFERABLE TO SAY ".MAKE PROPOSALS IN REGARD
TO ANY ASPECT OF THE POLITICAL PROCESS".
(D) IN THIS PARAGRAPH THE TERM "POLITICAL PROCESS" HAS
TAKEN THE PLACE OF "ELECTORAL PROCESS". THE FORMER IS A
MUCH WIDER TERM AND THE SOUTH AFRICAN GOVT WILL
FIND IT DIFFICULT TO UNDERSTAND WHY IT IS NECESSARY TO
USE THIS NEW PHRASEOLOGY.
(4) PARAGRAPH 7B:
THE FINAL SENTENCE OF THIS PARAGRAPH, WHILE ATTEMPTING
TO FIND A SOLUTION TO A DISPUTE SITUATION, HAS SEVERAL
UNACCEPTABLE PROVISOS: IT LEAVES OUT THE ADMINISTRATOR
GENERAL ALTOGETHER, LEAVING DECISIONS IN THIS REGARD TO THE
UNITED NATIONS SPECIAL REPRESENTATIVE ASSISTED, IN FACT,
BY A MEMBER OF HIS STAFF--HIS CHIEF LEGAL ADVISOR. THIS

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CLAUE WOULD REPRESENT AN IMPROVEMENT IF IT WOULD BE WORDED
AS FOLLOWS:
"ANY DISPUTES CONCERNING THE RELEASE OF POLITICAL
PRISIONERS OR POLITICAL DETAINEES SHALL BE RESOLVED BY THE
UNITED NATIONS SPECIAL REPRESENTATIVE AND THE ADMINISTRATOR
GENERAL ASSISTED BY A JURIST OF INTERNATIONAL STANDING WHO
SHALL BE DESIGNATED BY THE SECRETARY GENERAL."
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IT SEEMS ESSENTIAL THAT THIS DISPUTE MECHANISM SHOULD
ALSO BE LINKED TO PARAGRAPH 7D, I.E. THOSE HELD OUTSIDE SOUTH
WEST AFRICA.
(5) PARAGRAPH 8A:
IT IS ESSENTIAL THAT THE "...CESSATION OF HOSTILE
ACTS BY ALL PARTIES...." SHOULD BE MONITORED BY UNITED
NATIONS MILITARY OBSERVER TEAMS AND THE REINSERTION OF THE
WORDS "...UNDER UNITED NATIONS MONITORING" IS THEREFORE
NECESSARY. (6) PARAGRAPH 8B:
APART FROM THE GENERAL QUESTION REGARDING NUMBERS OF
TROOPS, FOR FORMULATION "...WOULD BE WITHDRAWN AFTER THE
CERTIFICATION OF THE ELECTION" IS COMPLETELY UNACCEPTABLE.
IT IS SUGGESTED THAT THIS PHRASE BE REPLACED BY
"THE WITHDRAWAL MUST BE COMPLETED BY INDEPENDENCE
SUBJECT TO WHATEVER ARRANGEMENTS THE NEW NAMIBIAN
GOVERNMENT MAY HAVE MADE FOR THE FUTURE".
(7) PARAGRAPH 8E:
AS PREVIOUSLY INDICATED THE WORD "ENSURE" PRESENTS MAJOR
DIFFICULTIES. WORDING SUCH AS
"SATISFY ITSELF THAT THE PROVISIONS OF THE AGREED
SETTLEMENT ARE OBSERVED BY ALL PARTIES" WOULD RESOLVE THIS
PROBLEM.
AS REGARDS THE TWO NEW SENTENCES THERE IS, FIRSTLY,
PROVISION FOR CONSULTATION BUT THE VALUE OF THIS DEPENDS ON
THE REINSERTION OF A MECHANISM FOR THE SETTLEMENT OF DISPUTES
WHICH WE UNDERSTAND, IS STILL UNDER CONSIDERATION--WITHOUT
THIS IT WOULD, FROM THE SOUTH AFRICAN POINT OV VIEW, BE
MEANINGLESS. SECONDLY, THE SOUTH AFRICAN GOVERNMENT WOULD
DEFINITELY WISH TO HAVE A CLARIFICATION OF THE FINAL
SENTENCE BEFORE IT WILL CONSIDER IT.
(8) PARAGRAPH 9:
"THE SPECIAL REPRESENTATIVE SHALL DECIDE..."
IT IS CONSIDERED NECESSARY THAT THE ADMINISTRATOR GENERAL
BE INCLUDED IN THIS DECISION MAKING PROCESS. THE SENTENCE
WILL THEN READ: "THE SPECIAL REPRESENATIVE AND THE
ADMINISTRATOR GENERAL SHALL DECIDE WHEN IT IS APPROPRIATE
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FOR UNITED NATIONS PERSONNEL TO ACCOMPANY THE POLICE FORCES
IN THE DISCHRGE OF THEIR DUTIES."
CLARIFICATION (T) IS STILL UNDER EXAMINATION.
THE FINAL SENTENCE OF PARAGRAPH 9 SHOULD APPEAR AS A
SEPARATE PARAGRAPH. AS IT NOW STANDS IT IS LINKED ONLY TO
THE POLICE.
GENERAL COMMENT: THIS INFORMAL CONSULTATIVE DOCUMENT
DEALS WITH THE AMENDMENTS (I.E., CLARIFICATIONS) WHICH HAVE
BEEN INTRODUCED BY THE FIVE. IT IS PRESUMED THAT THE MAIN QUESTIONS
OF PRINCIPLE ON WHICH THERE IS STILL NO AGREEMENT WILL STILL
BE DEALT WITH. IN THIS CONNECTION MINISTER GENCHER WHEN HE MET
MINISTER BOTHA ON SUNDAY STATED THAT THE POINTS HE HAD
PRESENTED ON THE PREVIOUS EVENING WERE NOT CTUAL PROPOSALS
BUT REPRESENTED VIEWS THAT HAD EMERGED FROM DISCUSSIONS WITH
OTHER PARTIES. HE DDED THAT, IN FACT, THEY WERE STILL TO
BE ANALYSED BY THE FIVE.

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SINCE THIS WHOLE MATTER WILL SHORTLY HAVE TO BE SUBMITTED
TO THE SOUTH AFRICAN GOVERNMENT IT WOULD BE USEFUL TO KNOW

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TO WHAT EXTENT IT WOULD BE POSSIBLE TO MEET THE BASIC
DIFFERENES RAISED BY MINISTER BOTHA. FOR EASE OF REFERENCE
THE FOLLOWING POINTS WERE RAISED INTER ALIA:
(I) SIZE, DISPOSITION (GROOTFONTEIN, OSHIVELLO AND
"POINTS FOR PROTECTION OF INSTALLATIONS, STORAGE AND LOGISTIC
STAGING POINTS"), COMPLETION OF WITHDRAWAL ("COMPLETED BY
INDEPENDENCE SUBJECT TO WHATEVER ARRANGEMENTS THE NEW
NAMIBIAN GOVERNMENT MAY HAVE MADE FOR THE FUTURE") OF
REMAINING SOUTH AFRICAN FORCES
(II) SIZE AND FUNCTION OF UNITED NATIONS FORCES (IN
NEWEST DRAFT (I.E., THE CLARIFYING LANGUAGE) THIS PROBLEM IS
PARTIALLY CIRCUMVENTED BY NOT SPELLING OUT EITHER--PROVISION HAS
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BEEN MADE FOR CONSULTATION--IN THE ABSENCE OF ANY PROVISION
FOR RESOLVING DISPUTES THE MATTER CANNOT BE REGARDED AS
RESOLVED)
(III) RELEASE OF DETAINEES (NEWEST DRAFT HAS
ATTEMPTED TO PROVIDE A MECHANISM FOR RESOLVING DISPUTES.
IN OUR NOTES COMMENTING ON NEWEST PROPOSALS WE COMMENT ON
SOLUTION OF PROBLEM--THIS MECHANISM MUST ALSO BE APPLICABLE
TO SOUTH WEST AFRICANS HELD OUT SIDE THE TERRITORY)
(IV) SOME MEANS OF RESOLVING DISPUTES (IT IS UNDERSTOOD
THAT A MECHANISM FOR RESOLVING DISPUTES IN GENERAL IS UNDER
CONSIDERATION)
(V) ELECTION DATE (IT MUST AGAIN BE EMPHASIZED THAT AN
ANNOUNCEMENT CANNOT BE DELAYED MUCH LONGER). END QUOTE

8. FOURIE'S COMMENTS ON WALVIS BAY: QUOTE:
THE FIVE'S TENTATIVE FORMULATION (PARA 3(U) USUN 0528)
DEALS WITH FOUR ASPECTS, NAMELY:
(1) NOTING THE CONFLICTING POSITIONS;
(2) REFERENCE TO STRENGTH OF FORCES WHICH IN REFERENCES
IN NEW YORK WAS LINKED TO WITHDRAWAL OF SOUTH AFRICAN
FORCES FROM SOUTH WEST AFRICA;
(3) THE WAY THE WALVIS BAY SUBJECT COULD BE HANDLED;
(4) VOTING RIGHTS OF SOUTH WEST AFRICANS IN WALVIS BAY.
IN MY OPINION THE INCLUSION OF ALL THESE ASPECTS IN A
PARAGRAPH IN THE PAPER WOULD COMPLICATE MATTERS FURTHER
RATHER THAN RESOLVING ANYTHING. THE "STRENGTH OF THE
FORCES" REFERS TO AN ENTIRELY DIFFERENT SECTION OF THE
PAPER, NAMELY WITHDRAWAL OF SOUTH AFRICAN TROOPS, AND THERE
SEEMS TO BE NO NEED FOR INCLUDING THIS IN THE PAPER.
(ASSURANCES HAVE ALREADY BEEN GIVEN THAT TROOPS WITHDRAWN
FROM SOUTH WEST AFRICA WOULD NOT BE TRANSFERRED TO WALVIS
BAY TO INCREASE THE ESTABLISHMENT THERE).
THE VOTING RIGHTS OF ALL NAMIBIANS, INCLUDING
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THOSE LIVING OR WORKING IN WALVIS BAY, ARE CATERED FOR IN THE
ELECTORAL PROCEDURES. IT SEEMS IRRELEVANT AND MIGHT BE
INTERPRETED AS PROVOCATIVE TO DRAG THAT ISSUE INTO THE
WALVIS BAY MATTER.
IF THE DELETION OF OLD PARAGRAPH 11 IS MAINTAINED,
THIS PROBLEM WOULD BE RESOLVED. IF SUBSEQUENTLY SOME REFERENCE
BECOMES UNAVOIDABLE, THEN IT WOULD APPEAR THAT ONLY THE
THIRD POINT OF THE WEST IS REALLY RELEVANT TO THE ISSUE.
IN THAT EVENT THE WORD "LEFT" COULD BE SUBSTITUTED
FOR "SUBJECT". IT WOULD THEN READ: "THE FIVE CONSIDER
THAT ALL ASPECTS OF THE QUESTION OF WALVIS BAY SHOULD
BE LEFT TO DISCUSSION BETWEEN THE SOUTH AFRICAN GOVERNMENT
AND THE FUTURE GOVERNMENT OF NAMIBIA." END QUOTE.

9. EMBASSY ADDENDUM: FOURIE SAID THAT CLARIFYING LANGUAGE
ON WHICH HE HAD MADE NO REMARKS APPEARED ACCEPTABLE TO HIM.
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